FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

No. [redacted] 46

JAMES E. PEURIFOY, PAUL V. STINES and BETTY O. STINES, JOHN S. HALL and DORIS D. HALL,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioners pray that a writ of certiorari issue to review the judgment of The United States Court of Appeals for the Fourth Circuit, entered in the above-entitled case on November 11, 1957.

OPINIONS BELOW

The opinion of the Tax Court of the United States is reported at 27 T.C. 149 and is printed in Appendix B hereto at page 4a. The opinion of the United States Court of Appeals for the Fourth Circuit is reported

at — F. 2d — (unreported at time of instant writing) and is printed in Appendix B hereto at page 15a.

JURISDICTION

The decision of the United States Court of Appeals for the Fourth Circuit was rendered on November 11, 1957. (Appendix B, p. 15a.) The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1254 and 26 U.S.C. Section 7482.

QUESTIONS PRESENTED

(1) Where petitioners entered upon certain construction employments away from their established residences prior to the taxable year and terminated such employments during the taxable year, the question is presented as to whether or not the amounts expended during the taxable year by said petitioners for

(a) board and lodging while so employed as construction workers at or near the construction site, and for

(b) transportation to return to their respective residences upon termination of such employments

are non-deductible expenses within the provisions of Section 24 (a)(1) of the Internal Revenue Code of 1939, as amended.

(2) If question (1) be answered in the negative, the further question is presented as to whether or not the expenses in question are deductible under the provi-

sions of Section 23(a)(1)(A) and Section 22(n) of the Internal Revenue Code of 1939, as amended.

CONSTITUTIONAL PROVISION, STATUTES AND REGULATIONS

(a) Constitution of the United States, Amendment Thirteen. (Appendix A, p. 1a.)

(b) 26 U.S.C. (1952) Section 22(n), being Section 22(n) of the Internal Revenue Code of 1939, as amended. Enacted by Section 8, Individual Income Tax Act of 1944, C.210, 58 Stat. 231 (Appendix A, p. 1a.)

(c) 26 U.S.C. (1952) Section 23(a)(1)(A), being Section 23(a)(1)(A) of the Internal Revenue Code of 1939, as amended. Enacted by Section 121(a) of the Revenue Act of 1942, C.619, 56 Stat. 798. (Appendix A, p. 1a.)

(d) 26 U.S.C. (1952) Section 24(a)(1), being Section 24(a)(1) of the Internal Revenue Code of 1939, as amended. Enacted by Section 127(b) of Revenue Act of 1942, C.619, 56 Stat. 798. (Appendix A, p. 2a.)

(e) Treasury Regulation 118, Section 39.22(n)-1, promulgated under Internal Revenue Code of 1939, as amended, 26 C.F.R. (1953 Revision) Section 39.22(n)-1. (Appendix A, p. 2a.)

(f) Treasury Regulation 118, Section 39.23(a)-1, promulgated under Internal Revenue Code of 1939, as amended, 26 C.F.R. (1953 Revision) Section 39.23(a)-1. (Appendix A, p. 3a.)

(g) Treasury Regulation 118, Section 39.23(a)-2, promulgated under Internal Revenue Code of 1939, as amended, 26 C.F.R. (1953 Revision) Section 39.23(a)-2. (Appendix A, p. 3a.)

STATEMENT

(a) Jurisdiction of Court of First Instance

The basis for federal jurisdiction in The Tax Court Of The United States, which is the court of first instance for this proceeding, is found in Section 272 and Section 1101 of the Internal Revenue Code of 1939, as amended. (26 U.S.C. (1952) Sections 272 and 1101).

(b) Facts Pertinent to All Petitioners

Petitioner Betty O. Stines did not have taxable income during the taxable year 1953 here involved. She appears as a petitioner in this proceeding as a nominal party by virtue of filing a joint income tax return with her spouse. (R. 12.)

Petitioner Doris D. Hall filed a separate return for the year 1953 and appears as a party to this proceeding only in respect to the matter of procuring the benefits of filing a joint return with her spouse. The respondent has conceded Petitioners John S. Hall and Doris D. Hall are entitled to compute their income taxes for 1953 under the provisions pertinent to the filing of joint returns and this matter is not in issue in this proceeding. (Appendix B, p. 9a.)

The term petitioners is hereinafter used to refer to the petitioners, James E. Peurifoy, Paul V. Stines and John S. Hall.

Each of the petitioners are construction workers and are employed in what is known as the heavy construction industry. The petitioners are members of the trade union known as the United Asso-

ciation of Journeymen and Apprentices of the Plumbing And Pipefitting Industry Of The United States and Canada. (Hereinafter referred to as the Union). (R. 9, 13, 17.)

Each of the petitioners obtains employment through the respective local headquarters of the Union. The local sends the petitioners to a job site by means of a "referral card". This referral card "clears" the holder as a qualified union member. Petitioners are hired by the job superintendent who is the representative of the employer. The job superintendent has some discretion in hiring, in that he can refuse to hire certain persons for cause, but must eventually hire persons sponsored by the Union. Upon termination of their respective employments at a job site, petitioners return to their local headquarters for new "referrals". (R. 9, 13, 17.)

A construction site is not a place of permanent employment for either the employers or employees engaged in construction. Upon completion of the phase of construction in which engaged, both employers and employees must seek new employment elsewhere. (Appendix B, pp. 5a, 19a.) The Tax Court determined as a conclusion of fact that the construction employments herein in controversy were "temporary" in nature. (Appendix B, p. 14a.) The United States Court of Appeals for the Fourth Circuit overruled this determination by the Tax Court and held that there was no evidence to sustain the determination of the Tax Court that the instant employments were "temporary". (Appendix B, p. 21a.) Such determination of the court below is believed to be erroneous.

(c) Facts Pertinent to Petitioner Peurifoy

Petitioner Peurifoy is an unmarried individual. He owns his "home" situated at Kure Beach, North Carolina, near Wilmington, North Carolina. He lives in his "home" whenever employment in the vicinity permits. If the employment is not too remote he returns to his "home" on week-ends. (R. 9.)

Petitioner Peurifoy is a pipe welder and a member of Local No. 329 of the Union with headquarters of said local in Wilmington, North Carolina. His employment itinerary since joining the Union on August 13, 1952 to time of trial is as follows (R. 9, 10-12):

Employment Site	Starting Date	Period
Acme, North Carolina	8/13/51	7 Months
Kinston, North Carolina	3/10/52	20½ Months
Mount Misery, North Carolina	11/30/53	17½ Months
Cherry Point, North Carolina	5/16/55	3 Months
Acme, North Carolina	Not Known	2 Weeks
Barberton, Ohio	10/3/55	1 Week

The employment here involved is that at Kinston, North Carolina, which began on 3/10/52 and lasted for approximately 20½ months. During 1953 petitioner expended $496.00 for room and board while away from "home" in pursuit of such employment and expended the sum of $8.54 for transportation to return to his "home" upon completion of such employment. These expenses, which have been stipulated to be in the amounts of $496.00 and $8.54 respectively, are the expenses in controversy in this proceeding in respect to petitioner Peurifoy. (Appendix B, p. 6a.)

(d) Facts Pertinent to Petitioner Stines

Petitioner Stines is married and has one child. Petitioner Stines owned his "home" in Raleigh, North

Carolina in 1953. His wife and child physically resided in this "home" during the entire year 1953. (R. 12-13.)

Petitioner Stines is a journeyman plumber and a member of Local No. 785 of the Union, with headquarters of said local in Raleigh, North Carolina. His employment itinerary since joining the Union in 1947 is not a matter of detailed record but includes about 30 jobs ranging in duration from 2 weeks to over a year. The employments beginning March 26, 1952 to time of trial were as follows (R. 13-16):

Employment Site	Starting Date	Period
Kinston, North Carolina	3/26/52	12½ Months
Raleigh, North Carolina	4/13/53	2 Weeks
Raleigh, North Carolina	5/6/53	6 Weeks
Charleston, South Carolina	6/23/53	3 Weeks
Raleigh, North Carolina	8/1/53	5 Months
Fort Bragg, North Carolina	Not Known	7½ Weeks
Raleigh, North Carolina	12/9/53	3 Weeks

Each of the above listed employments represents a different construction project even though in or near the same city. The last two employments listed above were made under conditions whereby his employer "loaned" petitioner Stines to other employers. Thus the 7½ week period and the 3 week period of such employments were included in the immediately preceding 5 months employment period.

The employment herein involved is that at Kinston, North Carolina which began on 3/26/52 and lasted approximately 12½ months. During 1953 petitioner Stines expended $262.50 for room and board while away from "home" in pursuit of such employment and expended the sum of $1.09 for transportation to re-

turn to his "home" upon completion of such employment. These expenses, which have been stipulated to be in the amounts of $262.50 and $1.09 respectively, are the expenses in controversy in this proceeding in respect to petitioner Stines. (Appendix B, p. 7a.)

In connection with his employment at Charleston, South Carolina, which began on 5/6/53 and lasted approximately 3 weeks, petitioner Stines expended $57.00 for room and board while away from "home" in pursuit of such employment and expended the sum of $42.00 for transportation to and from such place of employment. These expenditures in the respective amounts of $57.00 and $42.00 have been conceded to be deductible by the respondent and are not in issue in his proceeding. (Appendix B, pp. 8a, 12a, 13a.)

In connection with his employment at Fort Bragg, North Carolina, petitioner Stines expended $155.63 for room and board and $7.00 for transportation. These expenditures have also been conceded by the respondent to be deductible and are not in issue in this proceeding. (Appendix B, pp. 8a, 12a, 13a.)

(c) Facts Pertinent to Petitioner Hall

Petitioner Hall is married and has three children. Petitioner Hall owned his "home" in Raleigh, North Carolina in 1953. His wife and three children physically resided in this "home" during the entire year 1953. (R. 17.)

Petitioner Hall is a welder by trade and is a member of Local 785 of the Union with headquarters of said local in Raleigh, North Carolina. His employment

itinerary since joining the Union in 1952 is as follows (R. 18-20):

Employment Site	Starting Date	Period
Neuse, North Caroline	Not Known	1 Year
Kinston, North Carolina	10/21/52	8½ Months
Raleigh, North Carolina	7/13/53	7½ Months
Portsmouth, Ohio	Not Known	3½ Months
Aiken, South Carolina	Not Known	2 Weeks
Hopewell, Virginia	Not Known	7 Months
Tarboro, North Carolina	Not Known	1 Month
Moncure, North Carolina	Not Known	3 Months
Moncure, North Carolina	Not Known	3 Months

The employment here involved is that at Kinston, North Carolina which began on 10/21/52 and lasted for a period of approximately 8½ months. During 1953 petitioner Hall expended $530.13 for room and board while away from "home" in pursuit of such employment and expended the further sum of $2.01 to return to his "home" upon completion of such employment. These expenses, which have been stipulated to be in the amounts of $530.13 and $2.01 respectively, are the expenses in controversy in this proceeding in respect to petitioner Hall. (Appendix B, p. 9a.)

(f) Judicial History of Proceedings

In their respective returns, each of the petitioners claimed as a deduction for travel expenses an amount greater than the amount stipulated to be correct in respect to each of the petitioners. No controversy exists as to disallowance of the amounts in excess of the stipulated amounts. The issues herein are concerned only with the action of the respondent in disallowing the deductions claimed for the travel expenses which were incurred in fact and which are stipulated to be correct as to their amounts.

These expenses in question were disallowed by the respondent for the alleged reason that they constituted "personal and living expenses" the deduction of which is prohibited by Section 24(a)(1) of the Internal Revenue Code of 1939, as amended. Substantially, identical explanations for such disallowances appear in each of the statutory 90 day letters sent to each of the petitioners. (Appendix B, pp. 7a, 8a, 9a.)

Petitioners contested the deficiencies resulting from the disallowance of the claimed expenses and filed timely petitions in the Tax Court of The United States. The actions were consolidated for trial and after hearing on the matter, a decision was rendered by the Tax Court of The United States under date of October 31, 1956. In its opinion, which was reviewed by the entire court without dissent, the Tax Court sustained petitioners in their claims for the deduction of the expenses in question. (Appendix B, p. 14a.)

Thereafter the Commissioner Of Internal Revenue appealed the decision of The Tax Court of The United States to the United States Court of Appeals for the Fourth Circuit. This latter court reversed the holding of the Tax Court. (Appendix B, p. 21a.)

There is no dispute over the applicability of Section 22(n). It is agreed that if the expenses in question are deductible under the provisions of Section 23(a)(1)(A) they are deductible under the provisions of Section 22(n).

REASONS FOR GRANTING THE WRIT

(a) The Decision Below Is in Conflict With a Decision of the Ninth Circuit

The decision below of the United States Court of Appeals for the Fourth Circuit is directly in conflict with the decision of the United States Court of Appeals for the Ninth Circuit in the case of *Wallace* v. *Commissioner*, 144 F. 2d 407 (9th Cir. 1944). (Appendix C, p. 36a.)

The decision of the court below rests squarely on the proposition that the word "home" as used in Section 23(a)(1)(A) of the Internal Revenue Code of 1939 means the "place of employment" of the petitioner. This doctrine first found expression in the Fourth Circuit in the case of *Barnhill* v. *Commissioner*, 148 F. 2d 913 (4th Cir. 1945) which is cited in the opinion of the court below. (Appendix B, p. 20a.)

This conflict in the decisions of the circuits was recognized by this Court in the case of *Commissioner* v. *Flowers*, 326 U.S. 465, 471 (1946), wherein this Court said (Appendix C, p. 27a):

> "The meaning of the word 'home' in Section 23(a)(1)(A) with reference to a taxpayer residing in one city and working in another has engendered much difficulty and litigation. 4 Merten's Law of Federal Income Taxation (1942) Sec. 25.82. The Tax Court and the administrative rulings have consistently defined it as the equivalent of the taxpayer's place of business. See *Barnhill* v. *Commissioner*, supra, (C.C.A. 4). On the other hand, the decision below and *Wallace* v. *Commissioner*, 144 F. 2d 407 (C.C.A. 9), have flatly rejected that view and have confined the term to the taxpayer's actual residence. See also *Coburn* v. *Commissioner*, 138 F. 2d 763 (C.C.A. 2).

> "We deem it unnecessary here to enter into or decide this conflict."

The "difficulty and litigation" engendered by this conflict in meaning of the word "home" has continued unabated throughout the years that have elapsed since this Court made its pronouncement.

(b) The Decision Below Is in Conflict With the Controlling Decision Rendered by This Court

The decision of the United States Court of Appeals for the Fourth Circuit is in conflict with the decision of this Court rendered in *Commissioner* v. *Flowers*, 326 U.S. 465 (1946). (Appendix C, p. 22a). The *Flowers* case is the controlling decision on this problem and has been cited no less than 140 times since its enunciation.

(1) The decision below is in conflict with the *Flowers* decision in that the decision below is based on a doctrine not sanctioned by the *Flowers* decision.

It is clear that this Court did not sanction the doctrine that "home is synonymous with place of employment" in the *Flowers* case as evidenced by the language therein referring to this point when this Court said (Appendix C, p. 28a):

> "We deem it unnecessary here to enter into or decide this conflict."

The decision below rests squarely on the premise that a place of employment is tantamount to the "home" of the petitioner as that word is used in Section 23(a)(1)(A) of the Internal Revenue Code of 1939, as amended.

(2) The decision below is in further conflict with the *Flowers* decision in that the decision below was not based on a determination of facts as required by the *Flowers* decision.

This Court in *Commissioner* v. *Flowers* rested its decision on the *factual* determination that the expenses there in question were not required by the exigencies of "the business". The pertinent language is as follows (Appendix C, p. 29a):

> "The *facts* demonstrate clearly that the expenses were not incurred in the pursuit of the business of the taxpayer's employer, the railroad." (Emphasis added).

In respect to the factual aspects of this type of case, this Court said (Appendix C, p. 26a):

> "Whether particular expenditures fulfill these three requirements so as to entitle a taxpayer to a deduction is purely a question of fact in most instances."

In the decision below there was *no factual* determination that the expenses were not required by the exigencies of the business. The Tax Court, whose determinations of fact are presumptively conclusive, reached a decision on this point favorable to the petitioners and decided that the expenses in question *were* required by the exigencies of "the business". (Appendix B, pp. 9a, 10a.)

The court below *alleged* in its opinion that such expenses were *not* required by the business *of the employer* in order to give colorable compliance with the controlling principles set forth in *Commissioner* v. *Flowers*. Such conclusion in the court below was

not based on a determination *of fact* that such expenses were not required by the exigencies of the business as was done in the *Flowers* case, but was the result of the application of the principle that "home is the place of employment". This principle was applied by the court below as a rule of substantive law and thus operated to deny the deduction *without* inquiring into the *facts* regarding the necessity of the expenditures.

Petitioners were denied the deduction *because* their employments "were away from home". The identical situation for which the statute created the deduction. The doctrine which deems the place of employment to be the "tax home" immediately denies the deduction without inquiry into the facts as required by *Commissioner* v. *Flowers*. This is so for the reason that under the doctrine of the court below petitioner is deemed to carry his "home" with him to his place of employment as a matter of substantive law. When this doctrine is applied, petitioner *cannot* meet the statutory requirement of being "away from home" irrespective of the *actual fact* that he *is* away from home.

The rationale of the court below is disclosed in the following extract of the opinion (Appendix C, p. 20a):

> "When a taxpayer accepts employment at a place removed from the residence he maintains for his family his travel and maintenance expense is not usually deductible under Sec. 23(a)(1)(A). *Commissioner* v. *Flowers*, 326 U.S. 465, 66 S. Ct. 250, 90 L. Ed. 203. Indeed under the rule of *Commissioner* v. *Flowers* the expense in order to be deductible must be 'required by the exigencies' of the employer's business, not those of the calling

> of the employee. 'The job not the taxpayer's pattern of living, must require the travel.' *Carragan* v. *Commissioner*, 2 Cir., 197 F. 2d 246, 249. That an employee for reasons personal to himself and his family maintains a home at a distance from his business does not serve the business of the employer and ordinarily his travel expense and the expense of his maintenance at either place is not deductible. *Commissioner* v. *Flowers*, supra, *Barnhill* v. *Commissioner*, 4 Cir., 148 F. 2d 913, 159 A.L.R. 1210."

The conclusion of the court below that the expenses in question were "personal" did not result from an independent finding of fact as was true in the *Flowers* case. The court below first determined that the expenses in question were not deductible because the "places of employment were deemed to be the taxpayers' homes" and hence that taxpayers failed to meet the statutory requirement of being "away from home". The court below then classified the expenses in question as "personal" for the *reason* that the court itself had already determined the expenses to be nondeductible. The Tax Court determined as a question of fact that the expenses in question were *not* personal. (Appendix B, p. 12a.)

The existence of fundamental error in the decision below is further disclosed by the language in the opinion of the court below wherein it referred to an "exception" to the rule of the *Flowers* case. (Appendix C, p. 20a.)

> ". . . If we assume the validity of this exception to the rule of *Commissioner* v. *Flowers* as applied to one not self employed, . . ."

The decisions of this court constitute the supreme law of the land. As a matter of jurisprudence, there can be no "exceptions" to a mandate of this Court if the matter is within the orbit of the controlling decision of this Court. The efforts of the court below to find justification for its decision by taking the position that taxpayers failed to qualify for an "exception" to a Supreme Court decision *cannot* have logical basis.

(3) The decision below was in further conflict with the *Flowers* decision in that it erroneously concluded that the expenses were deductible only if required by the exigencies of the *employer's business.* The *Flowers* decision also permitted the deduction of such expenses if required by the *taxpayer's business.* In this respect the court below said (Appendix C, p. 20a):

> ". . . Indeed under the rule of *Commissioner* v. *Flowers* the expense, in order to be deductible must be 'required by the exigencies' of the employer's business, *not those of the calling of the employee.*" (Emphasis added.)

In this respect this Court stated in *Commissioner* v. *Flowers* (Appendix C, p. 26a):

> "(3) The expense must be incurred in pursuit of business. This means that there must be a direct connection between the expenditure and the carrying on of the trade or business of the taxpayer *or* of his employer." (Emphasis added)

The question of whether or not the instant expenses were required by the trade or business of the petitioner or the trade or business of the employer need not be answered immediately. However, it is apparent that such expenses are *not* rendered non-deductible

by the *Flowers* decision because they were incurred by the exigencies of the trade or business of the employee rather than the exigencies of the business of the employer as was maintained by the court below.

(4) The decision below is in further conflict with the *Flowers* case in that it denied the deduction to petitioners for failure to meet a requirement not found in the statutes or in the *Flowers* case. In this respect the court below said (Appendix C, p. 20a):

> ". . . If we assume the validity of this exception to the rule of *Commissioner* v. *Flowers* as applied to one not self-employed, it is essential that the employment away from the established tax home shall be temporary in contemplation at the time of its acceptance and not indeterminate in fact as it develops."

From the above it is clear that the court below made "temporary employment" an absolute condition of deductibility. In *Commissioner* v. *Flowers*, supra, this court said (Appendix C, p. 26a):

> "Three conditions must be satisfied before a traveling expense deduction may be made under Section 23(a)(1)(A).
>
> (1) The expense must be a reasonable and necessary traveling expense, as that term is generally understood. This includes such items as transportation fares and food and lodging expenses incurred while traveling.
>
> (2) The expense must be incurred while away from home.
>
> (3) The expense must be incurred in pursuit of business. This means there must be a direct connection between the expenditure and the carrying on of the trade or business of the taxpayer or of his employer. Moreover, such an expenditure

must be necessary or appropriate to the development and pursuit of the business or trade."

The requirements established by this Court do not include "temporary employment" as a condition of deductibility.

(c) The Decision Below Contravenes the Constitution of the United States

In its opinion the court below made reference on numerous occasions to the voluntary terminations of some of the employments of the petitioners. The frequency of such references creates an inescapable conclusion that such voluntary terminations of the employments by the petitioners influenced the decision of the court below. The references in the opinion are as follows:

". . . The record does not indicate whether any of these employments were terminated for cause, in consequence of completion of the work or for reasons personal to the taxpayer." (Appendix B, p. 16a.)

* * * * *

". . . It is stipulated that he left this employment for personal reasons." (Appendix B, p. 16a.)

* * * * *

"(Footnote). Stines testified that the 'personal reasons' for his leaving was that he was discharged after walking off the job during working hours to attend to a personal errand." (Appendix B, p. 16a.)

* * * * *

". . . This employment began October 21, 1952, and ended on July 10, 1953, when he resigned for reasons personal to him." (Appendix B, p. 17a.)

* * * * *

". . . He resigned for personal reasons from his jobs at Portsmouth, Aiken and Hopewell as well as from that at Kinston." (Appendix B, p. 17a.)

* * * * *

". . . We are informed that when Stines and Hall quit their jobs at Kinston in April and July, 1953, respectively, they did so for personal reasons, not because work for people of their trades was no longer available. The reason for Peurifoy's leaving in November, 1953 is not mentioned." (Appendix B, p. 18a.)

* * * * *

". . . It is clear that two of them left that employment for personal reasons when work was still available while the third left after 20½ months for an undisclosed reason. For aught that appears, work might have been available there for all three for much longer than 20½ months." (Appendix B, p. 21a.)

The purport of the above language seems clear. The court below seeks to deny to taxpayers who quit their jobs voluntarily the status of "temporary employment" in respect to such employments by concluding these employments could ripen into "indefinite" employment if petitioners had not "quit" their jobs. The result is to deny such a taxpayer a deduction to which he might otherwise be entitled because he cannot meet the requirements of "temporary employment" which has become established in the Fourth Circuit and in the Tax Court decisions.

The final result is to apply the tax laws of the country in a manner that penalizes a taxpayer for the sole reason that he quit his job of his own volition or even because he was discharged.

Such an application of the tax laws exercises a coercive influence on a taxpayer and tends to force him to continue work against his will. Such an application of the tax laws of this country deprives petitioner of a free choice in selecting his place of employment and is in contravention of the Thirteenth Amendment of the Constitution of the United States which prohibits involuntary servitude.

(d) The Decision Below Involves an Issue of National Importance That Affects the Entire Mobile Labor Force of the Heavy Construction Industry

A study of the facts in this case discloses that petitioners are representatives of the class of workers employed in the heavy construction industry. The opinion of the court below recognizes that the nature of the work is such that heavy importation of a large supply of skilled workers is normal and necessary for a large construction project and that the usual method of recruiting such labor is through the mechanism provided by the trade unions. (Appendix B, p. 19a.)

The number of persons employed in this mobile labor force is conjectural. However, it is known that there are approximately 3,500,000 members in the Building and Construction Trades Department of the American Federation of Labor-Congress of Industrial Organizations.

The importance of this problem is evidenced by the fact that the issue has been under study by the staff of the Legal and Monetary Affairs Subcommittee of the Committee on Government Operations of the House of Representatives of the Congress of the United States for some time.

The importance of this problem to the trade unions is evidenced by the fact that the costs of this litigation are being paid by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada which is one of the larger trade unions in this country.

(c) The Decision Below Involves an Unsettled Question of Federal Law

Reference has previously been made to the language of this Court in the case of *Commissioner* v. *Flowers* wherein this Court said (Appendix C, p. 28a):

> "We deem it unnecessary here to enter into or to decide this conflict."

The failure of this Court to pass decision on the important question of whether or not the word "home" as used in the pertinent statute means "home" in its common everyday meaning or has acquired a special meaning as the "place of employment" has "engendered much difficulty and litigation" as noted in the *Flowers* case, supra.

Litigation in respect to this important question has multiplied in recent years and there is indication that it will continue to be a source of confusion and litigation until it is authoritatively settled by this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

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